

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 270 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUNDARSHAN TRADING CO.

Versus

KADARNATH RAMSARAN RAI

Appearance:

MR SHIRISH JOSHI for Petitioner
MR BM GUPTA for Respondent No. 1
SERVED for Respondent No. 2, 4

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/11/97

ORAL JUDGEMENT

1. This appeal is preferred by the original plaintiff--Sudarshan Trading Company against the judgment and decree passed by the Ld.City Civil Judge in Civil Suit No.1224/73.

2. The suit of the plaintiff was already decreed

against the defendant No.1 namely the principal debtor as per order below Exh.22 dated 27.1.1977. Suit of the plaintiff against the rest of the defendants who were the sureties of the principal debtor was dismissed and being aggrieved thereby present appeal is filed by the plaintiff-appellant company.

3. In the summons for judgment taken out by the plaintiff against the defendants, the principal debtor, i.e. the defendant No.1 did not file any leave to defend application and the decree came to be passed against him on 27.1.1977. However, defendants No.2 to 4 have filed leave to defend application and they were granted leave to defend the suit unconditionally.. Their leave to defend application was treated as written statement at Exh.21 and based on the pleadings the Ld.City Civil Judge framed issues. Issue No.1 was as to whether the plaintiff proved that the defendant Nos 2 to 4 stood as sureties for the balance amount payable under the Chit Account No.30 & 33. After recording the evidence of the parties more particularly sureties at Exhs 55 & 56 the trial court came to conclusion that the contract of surety alleged to have been executed by defendant Nos 2 to 4 was not proved. He undoubtedly recorded the finding that the promissory note was executed by the principal debtor as well as by the surety, but in fact, the consideration was received by the principal debtor and therefore it was a promissory note executed by the principal debtor as the promise was given by the principal debtor to the company to return the amount as when demanded. The sureties have not received any consideration whatsoever under the promissory note nor had they agreed or promised to return the amount as and when demanded. The Ld.City Civil Judge has also recorded a finding that there was no surety bond executed by the surety and in the absence thereof no decree could be passed against the sureties based on the promissory note which was signed by the Principal debtor as well as sureties. In my opinion, reasoning of the learned City Civil Judge is absolutely sound in law. Sureties can not be said to be the persons who have promised to pay the amount as and when demanded by the appellant-Company. Promissory note binds to principal debtor who has promised to return the amount as and when demanded, but the sureties are surely not the beneficiaries or are not the persons who have promised to pay the amount as and when demanded nor can they be described as principal co-debtors as was alleged by the plaintiff-appellant. Reasoning of the Ld.City Civil judge and the findings recorded by him on the issues framed are absolutely legal and consistent with the provisions of Negotiable

Instruments Act as to when the executant of a promissory note is liable to make the payment and as to how the persons who have signed as sureties can not be made answerable as co-debtors or as co-executants of the promissory note because admittedly the advance is received by the principal debtor and not by the sureties. Therefore, I do not find any substance in this appeal either on facts or in law and same is therefore dismissed vis-a-vis the defendant Nos 2 to 4. No costs.

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